OPEN MEETING AGENDA ITEM

ORIGINAL

0000020951

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2005 JUL -6 P 4: 48

AZ CORP COMMISSION
DOCUMENT CONTROL

12

Arizona Corporation Commission
DOCKETED

JUL 0 6 2005

DOCKETED BY

JEFF HATCH-MILLER, CHAIRMAN
MARC SPITZER, COMMISSIONER
WILLIAM A. MUNDELL, COMMISSIONER
MIKE GLEASON, COMMISSIONER
KRISTEN K. MAYES, COMMISSIONER

IN THE MATTER OF THE APPLICATION OF SOUTHWEST TRANSMISSION COOPERATIVE, INC. FOR A RATE INCREASE.

DOCKET NO. E-04100A-04-0527

IN THE MATTER OF THE APPLICATION OFARIZONA ELECTRIC POWER COOPERATIVE, INC. FOR A RATE INCREASE.

DOCKET NO. E-01773-04-0528

EXCEPTIONS OF INTERVENOR MOHAVE ELECTRIC COOPERATIVE TO RECOMMENDED OPINION AND ORDER FOR SOUTHWEST TRANSMISSION COOPERATIVE, INC.

Mohave Electric Cooperative, Inc. ("Mohave"), by and through its attorneys undersigned, respectfully files these exceptions pursuant to A.C.C. R.14-301 (b) to the Recommended Opinion and Order concerning the Southwest Transmission Cooperative, Inc. ("Transco") in the above captioned matter.

A. MOHAVE'S EXCEPTIONS - SUMMARIES

1. When examining appropriate equity levels the Recommended Opinion and Order and the Staff fails to distinguish between the appropriate goals and objectives of a transmission cooperative and a distribution cooperative when examining equity.

. . .

. . .

2. In requiring a three (3) step increase, the Commission is setting rates for the future which is unprecedented and adversely impacts end use customers and may be unnecessary.

3. Without factual filed data to review, there must be an ACC proceeding to determine whether or not the rate increases proposed for the future are to be implemented.

4. Concerning Anza cost studies, Staff does not sufficiently understand the distinction between operation of a multi-state distribution cooperative (like Garkane and Columbus which operate and serve at retail in two (2) states), and a transmission cooperative like Transco serving at wholesale (and indeed making sales, perhaps, in many states). All of the Staff examples concerning the issue of Anza Electric Cooperative were examples of retail distribution cooperatives. The future focus, if any at all, should be on the transmission rate.

B. REASONING

1. When examining appropriate equity levels the Recommended Opinion and Order and the Staff fail to distinguish between the appropriate goals and objectives of a transmission cooperative and a distribution cooperative when examining equity.

a. As a result, they improperly emphasize increasing equity and rates to the harm of members and end users. A Transco thirty percent (30%) equity goal is a lead weight and an economic travesty to foist upon the backs of ratepayers when the actual lenders do not require it. In this case, the lender does not expect equity in Transco to be thirty percent (30%) or even on a track to thirty percent (30%). The Cooperative Finance Corporation ("CFC") representative testified that CFC supported the original filing of Transco. The only purpose of a high equity ratio is to permit greater return of patronage capital. The lender looks to the "take and pay" provisions of the All Requirements Contract and the Partial Requirements Contract for its ultimate security. Even with less than thirty percent (30%) equity RUS will permit return of some patronage capital. Therefore, availability to Transco of funds by way of

RUS/CFC borrowing is actually dependent on the strength of its members, the credit worthiness of the All Requirements Members and Partial Requirements Members. Certainly the TIER and DSC are the additional important criteria which determine whether or not new loans will be made. It is correctly pointed out that there is no “risk factor” (attributed to low equity or low TIER or DSC) assigned to the RUS/CFC loans to Transco and, therefore, imagined “financial risk” does not increase the loan or interest expense to Transco because of certain ratios being achieved or not being achieved.

b. In this case CFC agreed with the filing. The purpose for creating a transmission cooperative is to have the least possible Transco equity so that there can be the lowest possible distribution cooperative rates, but still borrow from RUS/CFC. The Transco finances are then supported by the credit worthiness of the distribution cooperatives which are attempting to make the lowest cost rates available to the rate payer/end user, and rates acceptable to the lender. No Transco has an equity at the thirty percent (30%) level. Lenders recognize it is the economic and financial strength of distribution cooperative members and ability to repay debt which determines whether or not Transco loans will be made.

c. No one with experience has indicated that a Transco equity of thirty percent (30%) is an appropriate goal. Mohave concurs in the Opinion to the extent that the Opinion points out that while equity is being built, thirty percent (30%) is not a goal that needs to be evaluated at this time.

d. In the future Transco should be allowed by Staff to use the calculations of TIER and DSC in the manner and using the methodology that the lenders use because it is the lenders which are the ultimate providers of the borrowed funds (the “money”). Those compilations of statistics adopted by RUS and CFC meet all of the lender’s requirements; and, if they are sufficient for the lenders, and if they result in less upward rate pressure on the

. . .

end users, and if they are reliable, then they should be satisfactory to Staff. The goal is to keep rates low, and Transco eligible to borrow from RUS and CFC.

2. In requiring a three (3) step increase, the Commission is setting rates for the future which is unprecedented and adversely impacts end use customers and may be unnecessary.

a. The step rate imposition without a hearing or a filing on the data showing its need with opportunity to intervene and to comment is not consistent with fairness to either the members such as Mohave or the end use customers. Such action is not good regulatory process. It was prompted by Staff Member Ramirez's (who has resigned) threat on behalf of Staff to not approve a loan, already approved by CFC/RUS, unless rates were higher.

b. A future step rate increase should be granted only on the basis of demonstrated need at the time and based on the advice of lenders and an analysis of current ratios and current circumstances (Mohave does not suggest that a full rate case is required, only that there needs to be an opportunity to be heard and to examine data before action is taken).

c. The CFC lender supported the original Application of Transco. This should be a signal to the Commission and to the Staff that when the banker is willing to lend the money based on the data and on the projections derived from that data, it takes some very serious analysis and reasoning and some serious circumstances to jump in three (3) steps out into the future and propose rate increases which the lender did not require. The Commission should be as sensitive to end use customers as the lenders have been.

d. There was insufficient time for analysis and insufficient opportunity to examine the three (3) step data proposal. Mention is made of this in the transcript. All of this is a reason why the step rate imposition should not occur without a filing of data and an opportunity to be heard and a hearing on the data.

. . .

e. Cooperatives are the only democratic one-man one-vote public service corporation utilities governed by the Arizona Corporation Commission with rate stability for over 200,000 people. For twelve (12) years, through its Board, has been able to manage its affairs through its Board of Directors with the support of its members and has not required a rate increase. This is an admirable twelve (12) year achievement. Where is the Transco expertise that now overrides this management?

f. The members which comprise the ownership of Transco are consulted on rates in the rate making process, and each member of the Board of Directors considers (as well as the Transco Board) the impact of rates on members before a rate case is even filed.

g. Lenders are consulted before requests for rate increases are filed.

h. It is, therefore, wholly inappropriate to refer to the Board of Directors of Transco as an entity with an interest adverse to that of the Transco corporate body by saying that the duly elected and fiduciarily responsible Transco Board members could "block" rate increases or take actions which would disadvantage "Transco" in violation of their fiduciary duty. After all, who is Transco? It is the sum of the very members represented by the Board of Directors who have only one (1) significant overriding goal: to assure Transco continues as an economically viable and successful Transco entity, providing "member-owner" service at the lowest possible rates. If before step rates are implemented the Board of Directors of Transco cannot be heard and have a "say" on the step rate increases, what kind of a signal is it that the Commission intends to send to a democratically run organization such as a cooperative? Who does the Staff think is protecting? The lender? No. The members? No. The end use customer? From what?

3. Without factual filed data to review, there must be an ACC proceeding to determine whether or not the rate increases proposed for the future are to be implemented.

a. As proposed in this three (3) step process. without a hearing, members and ratepayers are denied an opportunity to participate and this is a fundamentally unfair situation. Transco never agreed to the step increases, except in the form of a resolution.

b. Future events are uncertain, and an increase may be unnecessary in 2005, 2006 and 2007; and, if it is unnecessary, there is no purpose for a step increase simply to accelerate some myth about growing a thirty percent (30%) equity (a myth based on a misunderstanding of the role of equity in a G&T).

c. As noted above, the lenders originally approved the Transco rate filing as originally filed (and the pending loan).

d. It is unfair to Partial Requirements members to increase rates without a hearing since Partial Requirements member obligations are fixed. The Partial Requirements member pays its proportionate share of the debt. Since the Partial Requirements member pays its proportionate share of the debt and any future agreed upon joint ventures; and since the lenders rely on the credit worthiness of the Partial Requirement member and the All Requirements members and not the equity of Transco; and since as long as the debt is paid the Partial Requirements members are owed no duty by Transco for planning or for resources, the Partial Requirements member is punished by the Staff equity proposal. All of the foregoing are arguments in support of having a hearing before the imposition of a rate increase.

4. Concerning Anza cost studies, Staff does not sufficiently understand the distinction between operation of a multi-state distribution cooperative (like Garkane and Columbus which operate and serve at retail in two (2) states), and a Transco serving at wholesale (and indeed making sales, perhaps, in many states). All of the Staff examples concerning the issue of Anza Electric Cooperative were examples of retail distribution cooperatives. The focus, if any at all, should be on the transmission rate.

. . .

a. All members of a Transco are treated the same since all assume their share of the same costs and have the same rates.

b. There are no retail meters, customer service or administration expenses, or distribution expenses for the Transco to account for when serving Anza. The only cost is the wholesale cost of power and transmission, which is another case for Southwest Transmission Cooperative.

c. Garkane and Columbus as distribution cooperatives serving at retail have man hours to account for and allocate, supplies and offices and physical equipment on the ground, all of which needs to be accounted for as it is spread out over two (2) states. A Transco simply sells a common commodity at wholesale under rates which recover its cost of wholesale service and are approved by the governing Board and hence, by the members.

d. The Anza Electric Cooperative issue is a non-issue. In the future if the Transco requests a waiver, it should be granted or the matter addressed in a transmission case. Remember, Anza joined after the plants were built and has been a benefit.

C. SUMMARY

1. There should be no step increases without a filing and a hearing.

2. Partial Requirements members should not be punished by rates designed to achieve an equity level based on myth.

RESPECTFULLY SUBMITED this 6th day of July, 2005.

CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.

By: ______________________
Michael A. Curtis
William P. Sullivan
2712 North 7th Street
Phoenix, Arizona 85006-1090
Attorneys for Mohave Electric
Cooperative, Inc.

PROOF OF AND CERTIFICATE OF MAILING

I hereby certify that on this 6th day of July, 2005, I caused the foregoing document to be served on the Arizona Corporation Commission by delivering the original and fifteen (15) copies of the above to:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

Copies of the foregoing were mailed this 6th day of July, 2005 to:

Michael M. Grant, Esq.
Todd C. Wiley, Esq.
Gallagher & Kennedy
2575 East Camelback Road
11th Floor
Phoenix, AZ 85016

Christopher Hitchcock, Esq.
Law Offices of Christopher Hitchcock, PLC
P.O. Box AT
Bisbee, Arizona 85603-0115
Attorneys for SSVEC

John T. Leonetti
HC 70 Box 4003
Sahuarita, Arizona 85629

Chris Kempley, Chief Counsel
LEGAL DIVISION
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
UTILITIES DIVISION
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007